

REMARKS

Claims 1-23 and 26-52 are in the application. Claims 1-23 and 26-52 remain unchanged from the original versions thereof and claims 24 and 25 are canceled. Claims 1, 18, 24-26, 33, 40, 43, and 50 are the independent claims herein. No new matter is added as a result of the amendments submitted herewith.

Reconsideration and further examination are respectfully requested.

Claim Rejections – 35 USC § 101

Claims 24 and 25 were rejected under 35 USC 101 as being directed to non-statutory subject matter. Claims 24 and 25 are canceled in response to the rejections thereof.

Applicant respectfully submits that the cancellation of claims 24 and 25 obviates the rejection of claims 24 and 25 under 35 USC 101. Accordingly, Applicant requests the reconsideration and withdrawal of the rejection of claims 24 and 25 under 35 USC 101.

Claim Rejections – 35 USC § 102(e)

Claims 1-11, 13-19, 21, 23-41, and 43-51 were rejected under 35 USC 102(e) as being anticipated by McAuliffe et al. (hereinafter, McAuliffe). Applicant respectfully traverses this rejection.

Regarding claims 1-11, 13-17, 21, 23-41, and 43-51, the Office Action maintains that McAuliffe discloses each and every aspect of the claims. In particular, the Office Action alleges that McAuliffe discloses a method for online shopping including the steps of associating an online shopping cart with a consumer, and associating an item with the online shopping cart wherein the associated item was not selected by the consumer for association with the shopping cart.

The arguments of record regarding McAuliffe are incorporated herein.

Contrary to the Office Action's characterization of McAuliffe, McAuliffe does not disclose associating an item with an online shopping cart that is either (1) not selected by a consumer associated with the shopping cart or (2) in response to a selection of the item by an entity other than the consumer.

Applicant reiterates that McAuliffe discloses (1) "items" that are, in fact, selected by a consumer (as admitted by the Examiner at page 4, line 3 of the Office Action), and (2) enticements that are provided to inform consumers of buying opportunities corresponding to items placed in the consumer's shopping cart by the consumer. (See McAuliffe, paragraph [0025], lines 4-6) By way of definition McAuliffe states that "the invention can identify goods and services, collectively as items, in an electronic shopping cart system". (See McAuliffe, paragraph [0019], lines 7-9) That is, "items" have a specific meaning within McAuliffe.

McAuliffe also discloses that "[E]nticements ultimately can be used to inform consumers of buying opportunities corresponding to the items placed in the consumer's shopping cart 280. For example, enticements can relate to goods and services upgrades, up-sells, cross-brand sells, and other complementary or related items. Specifically, the enticements can be advertisements wherein the merchant can decide the content of the particular enticement being offered. For example, the merchant can program an enticement and determine the price and quantity of a particular item being offered for sale. It should be appreciated that the enticements can be programmed as visual presentations, audio presentations, or any combination of the two, for example, a multi-media presentation of information." (See McAuliffe, paragraph [0025], lines 4-11) Thus, it is clear that term "enticements" has a specific definition as disclosed and used in McAuliffe.

Therefore, meaning of the terms "items" and "enticements", as provided by McAuliffe, are different from each other. Accordingly, it is clear that the "items" selected by the consumer and the "enticements" presented to the consumer by the system are separate and distinct from each other. Again, items are goods and services placed in

the cart for purchase whereas enticements are audio, visual, or multimedia presentations of information that may be complementary to items being purchased. (emphasis added) (See McAuliffe, paragraph [0019], lines 13-15)

It is clear that McAuliffe explicitly and clearly defines "items" (i.e., items placed in the cart and being purchased) and "enticements" (i.e., advertisements and opportunities to purchase additional items) as being different and distinct from each other. While enticements may provide an opportunity for the consumer to purchase additional items that may be complimentary to a first item(s) already placed in the cart by the consumer, the enticements are not the same as the first or the additional items. That is, per the explicit disclosure therein, McAuliffe defines "items" and defines "enticements". Accordingly, the term "items" has a specific meaning (i.e., goods and services) and the term "enticements" has a separate and equally specific meaning (i.e., advertisements and opportunities or advertisements to purchase additional items). Therefore, "items" should not be read to include anything beyond the definition provided by the disclosure of McAuliffe.

In contrast to the explicit disclosure of McAuliffe, the Office Action appears to improperly interpret McAuliffe by using the term "items" to refer to both goods/ services placed in the cart and the enticements that reference additional items that may be purchased. Such a reading and interpretation of McAuliffe is contrary to the fundamental disclosures of McAuliffe.

Furthermore, Applicant respectfully submits that all of the "items" disclosed in McAuliffe that are placed in the cart for purchase are selected by the consumer. (See for example, McAuliffe paragraphs [0007], [0008], [0019], [0039])

Also, the cited and relied upon references to "items" allegedly associated with the cart and selected by an entity other than the consumer in fact reference sections of McAuliffe that disclose and reference "enticements" (See the cited and relied upon paragraph [0008], lines 10-13; paragraph [0007], lines 11-13; paragraph [0007], lines

14-17) Again, “items” and “enticements” are specifically defined by McAuliffe and are not the same or substitutes for each other.

McAuliffe also fails to disclose or suggest associating an “item” with a shopping cart in response to a selection of the item by an entity other than the consumer, as stated in Applicant’s claims 24, 40, and 50.

Regarding claims 18, 19, and 21, the Office Action also rejects these claims under 35 USC 102(e) as being anticipated by McAuliffe. Independent claim 18 relates to a method including associating an item with an online shopping cart in response to a selection of the item by an entity other than a consumer. As discussed above, McAuliffe discloses, “the invention can provide the consumer with an enticement. The enticements can provide the consumer with an opportunity to buy additional items which can be complimentary to the items being purchased.” (cited and relied upon by the Office Action, See McAuliffe paragraph [0007]) While the merchant/seller entity of McAuliffe may provide enticements via the system disclosed therein, McAuliffe does not disclose or suggest the merchant/seller entity associating an item with a shopping cart. The McAuliffe disclosed merchant/seller entity provides an enticement that is associated with certain items, not a shopping cart. The enticements correspond to the items selected by the consumer, as discussed at length above.

Applicant respectfully submits that dependent claims 2-11, 13-17, 19, 21, 23, 27-32, 34-39, 41, 44-49, and 51 are patentable over McAuliffe under 35 USC 102(e) for at least the reasons stated above regarding claims 1, 18, 24-26, 33, 40, 43, and 50.

Accordingly, the reconsideration and withdrawal of the rejection of claims 1-11, 13-19, 21, 23-41, and 43-51 under 35 USC 102(e) are respectfully requested, as is the allowance of the claims.

Claim Rejections – 35 USC § 103(a)

Claims 12 and 22 were rejected under 35 USC (a) as being unpatentable over McAuliffe. This rejection is traversed.

Applicant respectfully submits that it would not be obvious, as alleged in the Office Action, to prevent an item from being disassociated from the shopping cart. For example, McAuliffe specifically discloses permitting a consumer the ability to return (i.e., to remove) a first item and a second item from a cart (See McAuliffe, paragraph [0008] and [0043]). Thus, contrary to the accusations made in the Office Action, McAuliffe does not disclose a method wherein the item cannot be disassociated from the shopping cart. Instead, McAuliffe discloses a method wherein the item can be disassociated from the shopping cart.

Applicant notes that claims 12 and 22 are dependent claims, depending from base claims submitted as patentable over McAuliffe as discussed in detail above. Accordingly, Applicant respectfully submits that the disclosure of McAuliffe does not render claims 12 and 22 obvious under 35 USC 103(a).

Claims 20, 42, and 52 were rejected under 35 USC (a) as being unpatentable over McAuliffe in view of Batachia et al. (hereinafter, Batachia). This rejection is traversed.

Inasmuch as McAuliffe does not disclose or suggest that for which it is cited and relied upon for disclosing regarding the independent claims (discussed in detail above), and claims 20, 42, and 50 are dependent claims, Applicant respectfully submits that combining the disclosure of McAuliffe with the alleged disclosure of Batachia (not admitted as feasible or possible by Applicant) does not render claims 20, 42, and 50 obvious under 35 USC 103(a). That is, the basis for the rejection does not support the rejection of claims 20, 42, and 50.

Accordingly, the reconsideration and withdrawal of the rejection of claims 20, 42, and 50 under 35 USC 103(a) are respectfully requested, as well as the allowance of same.



CONCLUSION

Accordingly, Applicant respectfully requests allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

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Date

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